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COUNTY OF ALAMEDA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LISAMARIA MARTINEZ,

Plaintiff,

v.

COUNTY OF ALAMEDA,

Defendant.

Case No. 20-cv-06570-TSH

**DEFENDANT COUNTY OF ALAMEDA'S
OBJECTION AND MOTION TO STRIKE
SUR-REPLY FILED BY PLAINTIFF
LISAMARIA MARTINEZ**

DATE: January 5, 2023
TIME: 9:30 a.m.
DEPT: Courtroom G (15th Floor)
JUDGE: Hon. Thomas S. Hixson

1 Plaintiff Lisamaria Martinez (“Plaintiff”) and the County of Alameda (“County”) previously
2 filed cross-motions for summary judgment or partial summary judgment. See ECF Nos. 44, 48. The
3 Court issued an Order on August 11, 2022, denying Plaintiff’s prior motion for partial summary
4 judgment in its entirety, while denying in part and granting in part the County’s prior motion for
5 summary judgment. ECF No. 54. On October 20, 2022, counsel for the parties attended a remote status
6 conference with the Court, during which counsel advised the Court of legal issues which must be
7 resolved in order to facilitate resolution. Accordingly, the parties agreed to the submission of further
8 briefing addressing Plaintiff’s cause of action for declaratory relief, to obtain the necessary legal rulings
9 from the Court. After lengthy discussion, the parties and the Court agreed to a specific briefing
10 schedule, as reflected in the Court’s order in ECF No. 58.

11 Specifically, on October 20, 2022, the Court issued an order that Plaintiff was to file a motion for
12 summary adjudication by November 17, 2022, on Plaintiff’s cause of action for declaratory relief,
13 specifically addressing the issue of whether the County is required to provide scribe services under the
14 ADA. ECF No. 58. The Court also ordered the County to “respond” by December 8, 2022, and ordered
15 Plaintiff to file her reply by December 15, 2022. Id. The Court set the hearing for January 5, 2023, at
16 9:30 a.m. Id.

17 In accordance with the Court’s instructions, Plaintiff filed her motion for summary adjudication
18 (“Plaintiff’s MSA”) on November 17, 2022 (ECF Nos. 61, 62), which did not include any new alleged
19 material facts and instead relied solely on the alleged material facts that Plaintiff relied upon in her prior
20 motion for partial summary judgment (see ECF Nos. 44, 45). On December 8, 2022, the County filed its
21 response to Plaintiff’s MSA, which included the County’s opposition to Plaintiff’s MSA, as well as the
22 County’s own MSA on Plaintiff’s declaratory relief cause of action. ECF Nos. 63, 63-1 to 63-3. The
23 County’s MSA did not seek or request any additional briefing outside of the Court-ordered briefing
24 schedule and simply sought the exact same relief sought in Plaintiff’s MSA – adjudication of the
25 declaratory relief cause of action. Id. It would be a waste of judicial resources to have the Court
26 analyze the merits of the declaratory relief cause of action without contemporaneously determining if it
27 should be dismissed.

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On December 15, 2022, Plaintiff filed her reply brief. ECF No. 64. Notably, Plaintiff did not simultaneously submit any response to the County's Supplemental Separate Statement of Uncontroverted Facts. Then, without first requesting permission from the Court, Plaintiff proceeded to file an unauthorized sur-reply on December 22, 2022, in the form of a purported "Opposition" to the County's MSA, which includes not only an additional 10 pages of unauthorized briefing, but also purports to submit additional evidence and facts.¹

The County hereby objects to, and moves to strike, Plaintiff's sur-reply. Plaintiff's sur-reply was not authorized by the Court, nor was the introduction of new purported evidence and facts, and, as such, the County respectfully requests that all such submissions by Plaintiff on December 22, 2022, be stricken and disregarded entirely. However, should the Court be inclined to consider the additional, unauthorized briefing, then the County respectfully requests the January 5, 2023 hearing be continued to allow the County at least three (3) weeks to submit a response to Plaintiff's sur-reply, including submitting rebuttal evidence in response to the new alleged evidence inappropriately submitted by Plaintiff. The request for at least three weeks is based in part on the fact that both attorneys for the County, Kevin Gilbert and Nicholas Fine, recently contracted COVID, which has significantly limited and will continue to limit their ability to work on this matter in the coming weeks.

Dated: December 28, 2022

Respectfully submitted,

ORBACH HUFF + HENDERSON LLP

By: /s/ Kevin E. Gilbert

Kevin E. Gilbert
Nicholas D. Fine
Attorneys for Defendant
COUNTY OF ALAMEDA

¹ In addition, Plaintiff filed her "Objections and Response" to the County's Supplemental Separate Statement of Uncontroverted Facts with her sur-reply on December 22, 2022. ECF No. 65-1. In accordance with this Court's order on August 13, 2021 (ECF No. 33), such a response and objection to the County's Supplemental Separate Statement of Uncontroverted Facts was due with Plaintiff's reply brief on December 15, 2022. As such, Plaintiff failed to timely submit her Objections and Response and that submission should be disregarded for this additional reason. Similarly, to the extent Plaintiff has attempted to submit alleged new facts and evidence with her sur-reply, such new facts and evidence are not permitted in a reply brief and should be disregarded. ECF No. 33.